



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, OLC, LRE, ERP, FFT
OPR-DR, MNR-DR, FFL

Introduction

This hearing convened as a result of cross Applications. In the Tenant's Application for Dispute Resolution filed on July 23, 2023 (which was later amended to include further relief) the Tenant sought the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on September 3, 2021 (the "10 Day Notice");
- an Order canceling a 1 Month Notice to End Tenancy for Cause;
- an Order restricting the Landlords' right to enter the rental unit;
- an Order that the Landlord:
 - make emergency repairs to the rental unit; and,
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement; and,
- recovery of the filing fee.

In the Landlord's Application filed on September 21, 2021, the Landlord sought an Order of Possession and monetary compensation based on the 10 Day Notice as well as recovery of the filing fee paid for their Application.

The hearing was conducted by teleconference at 11:00 a.m. on November 22, 2021. Only the Landlord's Property Manager, B.B., called into the hearing. He gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 11:12 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Property Manager and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Property Manager testified that they served the Tenant with the Notice of Hearing and the Application on September 24, 2021 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served by registered mail are deemed served five days later; accordingly, I find the Tenant was duly served as of September 29, 2021 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Tenant's Application: Analysis and Conclusion

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

Commencement of Hearing:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Tenant did not attend the hearing, and the Landlord's Representative appeared and was ready to proceed, **I dismiss the Tenant's claim without leave to reapply.** This includes dismissing their request that I cancel the 10 Day Notice. As such, the tenancy shall end in accordance with the 10 Day Notice.

Section 55 of the *Residential Tenancy Act* provides in part as follows:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have reviewed the 10 Day Notice and find that it complies with section 52 of the *Act*. Consequently, and as I have dismissed the Tenant's claim, the Landlord is entitled to an Order of Possession effective two days after service.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation for unpaid rent?
2. Is the Landlord entitled to recover the filing fee?

Background Evidence

The Landlord's representative testified that this tenancy began May 1, 2016. Monthly rent was \$845.00 as of the date of the hearing. The Tenant paid a security deposit of \$387.50 on April 29, 2016.

The Tenant failed to pay rent on September 1, 2021 such that the Landlord issued the Notice. The Notice was posted to the rental unit door on September 3, 2021.

The Notice informed the Tenant that they had five days in which to pay the outstanding rent of \$845.00 or apply to dispute the Notice. Although the Tenant applied to amend their application to dispute the 10 Day Notice, they failed to call into the hearing such that their request was denied. The Property Manager confirmed the Tenant failed to pay the outstanding rent for September and failed to pay for October and November such that at the time of the hearing the sum of \$2,535.00 was outstanding for rent.

Landlord's Application—Analysis and Conclusion

Section 26 of the *Act* provides that a Tenant must pay rent when rent is due. I find the Tenant was obligated to pay rent of \$845.00 per month. I further find that the Tenant failed to pay as required and in doing so breached both the tenancy agreement and section 26 of the *Act*.

I accept the Landlord's Agent's testimony that as of the date of the hearing the sum of \$2,535.00 was outstanding in rent. I therefore award the Landlord the **\$2,535.00** requested. As the Landlord has been successful in their Application, I also award them recovery of the filing fee for a total award of **\$2,635.00**.

Conclusion

The Tenant failed to call into the hearing such that their Application is dismissed without leave to reapply.

The Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order may be filed and enforced in the B.C. Supreme Court.

The Landlord's request for monetary compensation from the Tenant for unpaid rent and recovery of the filing fee is granted. In furtherance of this I grant the Landlord a Monetary Order in the amount of **\$2,635.00**. This Order must also be served on the Tenant and may be filed and enforced in the B.C. Provincial Court (Small Claims Division).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 22, 2021

Residential Tenancy Branch